

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 1/13/2022
--

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NOVARTIS PHARMA AG,

Plaintiff,

v.

INCYTE CORPORATION,

Defendant.

Case No. 1:20-cv-00400-GHW

Hon. Gregory H. Woods

ORDER GRANTING JOINT
APPLICATION FOR APPOINTMENT
OF COMMISSIONERS AND
DIRECTION OF SUBMISSION OF
HAGUE CONVENTION
APPLICATION

GREGORY H. WOODS, United States District Judge:

On January 13, 2022, Plaintiff Novartis Pharma AG (“Novartis”) and Defendant Incyte Corporation filed a joint application seeking entry of an order appointing certain U.S. attorneys as commissioners to take the voluntary oral depositions under oath via video conference in Switzerland of certain Novartis witnesses (the “Application”).

Novartis seeks authorization from a competent Swiss authority to conduct voluntary depositions under oath via videoconference of two witnesses whom Incyte seeks to depose and who either live or work in Switzerland. The Swiss Penal Code provides that attorneys attempting to take a deposition or carry out other activities on behalf of a foreign state in Switzerland outside of authorized methods are subject to arrest on criminal charges. *See* Article 271 of the Swiss Penal Code. Thus, Novartis represents it must comply with the Hague Convention in seeking testimony in this investigation in order to comply with Swiss law.

I find that the evidence sought is reasonably necessary to fully investigate Novartis’s breach of contract and declaratory judgment claims in this litigation. I also find that the evidence

sought is reasonably necessary to fully investigate Incyte's defenses in this litigation. Accordingly, the Application is granted.

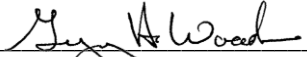
The following listed counsel for Novartis and Incyte are duly appointed as commissioners under Article 17 of the Hague Convention of 17 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters:

1. Counsel at Quinn Emanuel Urquhart & Sullivan, LLP (located at 51 Madison Avenue, 22nd Floor, New York, New York 10010) for Defendant Incyte (Incyte Corporation, 1801 Augustine Cut-off, Wilmington, DE 19803): Richard I. Werder, Jr., F. Dominic Cerrito, Eric Stops, Daniel P. Mach, Luke H. Phillips, and Sophia Qasir;
2. Counsel at Greenberg Traurig, LLP (located at One Vanderbilt Avenue, New York, New York 10017) for Plaintiff Novartis (Novartis Pharma AG, Forum 1, Novartis Campus, 2056 Basel, Switzerland): Harold S. Shaftel, Sylvia E. Simson, John C. Molluzzo, Jr., Keith Hammeran, and Andrea N. Chidylo; and
3. Counsel at Bär & Karrer AG (located at Brandschenkestrasse 90, 8027 Zurich, Switzerland) for Defendant Novartis (Novartis Pharma AG, Forum 1, Novartis Campus, 4056 Basel, Switzerland): Martina Athanas.

This Order shall be given to counsel at Bär & Karrer AG who will file it together with the necessary application for authorization from the relevant Swiss authorities.

SO ORDERED.

Dated: January 13, 2022
New York, New York



GREGORY H. WOODS
United States District Judge